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6 CLERK U.S. DISTRICT COURT
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10 **UNITED STATES DISTRICT COURT**
11 **WESTERN DISTRICT OF WASHINGTON**
12 **AT SEATTLE**

13 NO.

14 **CV 051848** *JLC*

15 ONYX PHARMACY, INC., a
16 Washington Corporation,

17 Plaintiff,

18 v.

19 MEDICAL ASSISTANCE
20 ADMINISTRATION DEPARTMENT
21 OF SOCIAL AND HEALTH
22 SERVICES, STATE OF
23 WASHINGTON,

24 Defendant.

25 **NOTICE OF REMOVAL TO**
26 **FEDERAL COURT**

27 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

28 PLEASE TAKE NOTICE that defendant STATE OF WASHINGTON,
29 DEPARTMENT OF SOCIAL AND HEALTH SERVICES, hereby removes to this court the
30 state court action described below.

31 1. At the times relevant to the complaint, plaintiff Onyx Pharmacy, Inc. alleges it
32 is a Washington State corporation with its principal place of business located in Bellevue,
33 King County, Washington. This case alleges the violation of civil rights under 42 U.S.C. §§

1 1981 and 1983, as well as state law claims including, tortious interference with business
 2 expectancy; and racial discrimination under RCW 49.60 et seq.

3 2. On October 18, 2005, counsel for the State of Washington Department of
 4 Social and Health Services was served a lawsuit filed in the Superior Court of Washington for
 5 King County, Case No. 05-2-34246-3 SEA entitled "Onyx Pharmacy, Inc., a Washington
 6 Corporation vs. Medical Assistance Administration Department of Social and Health
 7 Services, State of Washington."

8 3. The complaint asserts an action under 42 U.S.C. §§ 1981 and 1983 against the
 9 individually named defendant. This notice of removal is being filed within 30 days of service
 10 of the complaint alleging an action under 42 U.S.C. §§ 1981 and 1983 against the named
 11 individual defendant.

12 4. Under 28 U.S.C. § 1331 and § 1343, the United States District Courts "have
 13 original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the
 14 United States."

15 5. Plaintiff alleges in Count III, paragraph 3.3 of the complaint that the defendant
 16 violated the plaintiff's rights pursuant to 42 U.S.C. §§ 1981 and 1983 (which allegations are
 17 not admitted by defendant State of Washington, Department of Social & Health Services).

18 6. This is a civil action of which this court has original jurisdiction under 28
 19 U.S.C. § 1331 and § 1343, and is one which may be removed to this court by defendant
 20 pursuant to 28 U.S.C. § 1441(b) in that it is a civil action founded on a claim or right arising
 21 under federal law. The district court also has supplemental jurisdiction over the state claims
 22 pursuant to 28 U.S.C. § 1337. An Eleventh Amendment bar as to supplemental claims does
 23 not divest the federal court of jurisdiction over claims arising under federal law. *Wisconsin*
 24 *Dept. of Corrections v. Schacht*, 524 U.S. 381, 118 S. Ct. 2047, 141 L. Ed. 2d 364 (1998).

25 7. Venue in the Western District is appropriate as this is the judicial district in
 26 which the plaintiff's principal place of business is located in King County, Washington.

8. Defendant reserves all rights and defenses, including Eleventh Amendment immunity, and this notice is made without waiving Washington State's sovereign immunity or any other defenses it may have in response to this lawsuit.

9. In compliance with 28 U.S.C. § 1446(a), the defendant attaches copies of all process, pleadings and orders served upon it in this case.

DATED this 7th day of November, 2005.

ROB MCKENNA
Attorney General

Catherine R. Horne,

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